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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/796,133

03/10/2004

Gagan Puranik

SKY-03-002

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7590

10/20/2006

VERIZON

PATENT MANAGEMENT GROUP

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EXAMINER

DESIR, PIERRE LOUIS

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/796,133

Applicant(s)

PURANIK ET AL.

Examiner

Pierre-Louis Desir

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-30.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


JOSEPH FEILD
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicants are respectfully reminded that Broadly written claims are broadly interpreted by Examiner.

Applicants argue that Baranowsky, II et al. and Kureshy et al. do not disclose or suggest logic to determine, when the first terrestrial network is unavailable, whether a second terrestrial network is available, the second terrestrial network being slower than the first terrestrial network. Applicants submit, regarding claim 1, that even assuming that Kureshy et al. discloses first and second terrestrial networks, where the second terrestrial network is slower than the first terrestrial network, one skilled in the art would not have been motivated to incorporate the alleged teaching of Kureshy into Baranowsky system, absent impermissible hindsight.

As disclosed in the final rejection, Baranowsky discloses a device comprising means for monitoring the availability of both the cellular and the satellite network (i.e., determining the availability of both networks) (see col. 16, lines 32-34), establishing a communication over one of the satellite and cellular networks in accordance with availability of the networks (data transmission) (see col. 16, lines 35-38), determine, when the first network is unavailable, whether a second network is available (i.e., signal strength monitoring) (see col. 16, lines 41-42, and lines 52-56), the second network being different than the first network (satellite networks and cellular networks) (see abstract, and col. 16, lines 32-34), and transmit the data to the second network using the wireless transceiver when the second network is available (i.e., handing off an ongoing communication over the cellular network to the satellite network in accordance with the monitored strength) (see col. 16, lines 39-42, and lines 52-56). Kureshy, on the other hand discloses a device, which can communicate with a communication network via WLAN, cellular, or satellite communication network (see paragraphs 80 and 82). And, as known in the art, WLAN network provides higher speed access than a cellular network or satellite network. Thus, Kureshy discloses first and second terrestrial networks, where the second network is slower than the first network.

In response to applicants' argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicants submit that the examiner has not pointed out any suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to incorporate Kureshy's alleged disclosure of first and second network terrestrial networks into Baranowsky.

Examiner respectfully disagrees with applicants. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, A motivation for combining would have been to provide continuous transition as related to network access.

Regarding claim 3, Applicants argue that Baranowsky and Kureshy do not disclose or suggest logic to determine, when the first network is available, whether transmission of the data through the first network was successful.

Examiner respectfully disagrees. As cited in the previous Office Action, Baranowsky discloses that the control processor determines whether or not service is available. If MSAT service is available, data are received and transmitted through the first network (see fig. 4, col. 10, lines 45-60, and col. 13, lines 15-21). Thus, with the availability of service on a particular network would correspond to data transmission through that particular network is successful.

Regarding claim 29, Applicants argue that Baranowsky and Kureshy do not disclose selecting when data is to be transmitted from the device.

Examiner respectfully disagrees. Baranowsky discloses that the mobile terminal apparatus that includes the central processor for coupling a handset with a keypad to a transceiver assembly, the central processor includes means to selectively couple the handset to a transmitter/receiver of both the cellular network and the satellite network for communicating over the selected network in accordance with one of a plurality of operating modes entered on the keypad. As herein embodied, and referring again to FIG. 2 the inter-operability modes include a mode 35 for permitting communication over MSAT only, and a mode 41 for communicating over the cellular network only. In addition, the central processor includes a mode that provides priority to the MSAT network, but is also capable of selecting the cellular network as indicated at 43. As shown at 45 of FIG. 2 the central processor includes an operating mode that gives priority to communicating over the cellular network but also provides for effecting a handoff to the MSAT network when required (see col. 8, lines 50-67). Thus, a selection of a particular network is made when data is to be transmitted from the device.

In response to applicant's argument (Applicants' argument as related to claim 2) that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, A motivation for combining would have been to provide to the device the ability to switch between networks whenever factors, such as available service, signal strength, or types of communications being supported occur (see page 4, paragraph 54).

Regarding claim 24, In response to applicants' argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).